

# EXHIBIT 73

1                   UNITED STATES DISTRICT COURT  
2                   NORTHERN DISTRICT OF CALIFORNIA  
3                   SAN FRANCISCO DIVISION  
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7       IN RE PACIFIC FERTILITY         )  
8       CENTER LITIGATION,                 ) Case No. 3:18-cv-01586-JSC  
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11   )  
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13                   VIDEOTAPED & VIDEOCONFERENCED DEPOSITION of  
14                   PACIFIC MSO, LLC's 30(b)(6) designee  
15                   JOSEPH CONAGHAN, Ph.D.

16                   November 13, 2020

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24       CHERREE P. PETERSON, RPR, CRR, CSR No. 11108  
25       468470



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13                         VIDEOTAPED & VIDEOCONFERENCED DEPOSITION of  
14 PACIFIC MSO, LLC's 30(b)(6) designee JOSEPH CONAGHAN,  
15 Ph.D., taken on behalf of Defendant Chart, Inc.,  
16 remotely beginning at 2:15 p.m., Friday, November 13,  
17 2020, before CHERREE P. PETERSON, RPR, CRR, Certified  
18 Shorthand Reporter No. 11108.

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1 those lines the controller displays the level in inches  
2 of liquid nitrogen in the tank. And that's a permanent  
3 display on the TEC 3000 controller. It's always  
4 present. It's always there. It's always lit up.

15:46 5                   And on February 15th, 2018, in the afternoon  
6 the controller went into an alarm condition. And when I  
7 looked at it, it said on the display that the level of  
8 liquid nitrogen in the tank was zero inches. And that  
9 seemed very unlikely. And on checking the tank, the  
15:46 10 tank had a normal level of liquid nitrogen inside. And  
11 the controller was for some reason not capable of doing  
12 its normal measurement of the level that was in there.

13                   Q. BY MR. POLK: And do you believe that those  
14 symptoms that you've just described made using the  
15:46 15 controller dangerous?

16                   A. Yes.

17                   MR. DUFFY: Objection. Beyond the Rule  
18 30(b)(6) notice. Move to strike. Foundation.  
19 Speculation.

15:46 20                   THE WITNESS: Yes. Those symptoms made the  
21 controller unusable.

22                   Q. BY MR. POLK: Did Chart ever warn you about the  
23 problems with its controller?

24                   MR. DUFFY: Objection. Beyond the scope of the  
15:47 25 Rule 30(b)(6). Move to strike.

1 THE WITNESS: They did not.

2 Q. BY MR. POLK: Did you ever receive a recall  
3 notice --

4 MR. DUFFY: Objection --

15:47 5 MR. POLK: I'll get my question out, and then  
6 you get your objection out.

7 THE REPORTER: Yeah. Can you ask it again,  
8 please.

9 Q. BY MR. POLK: Did Chart ever issue -- or did  
15:47 10 you ever receive a recall notice from Chart concerning  
11 the defective controller?

12 MR. DUFFY: Objection. Beyond the Rule  
13 30(b)(6). Objection. Speculation. Objection.  
14 Foundation.

15:47 15 THE WITNESS: I have never received a recall  
16 letter from Chart on TEC 3000 controllers or tanks like  
17 the kind we use here.

18 Q. BY MR. POLK: Had you received a warning or  
19 recall notice concerning the defective controller, would  
15:47 20 you have done anything differently?

21 MR. DUFFY: Objection. Beyond the scope of the  
22 Rule 30(b)(6). Objection. Argumentative. Objection  
23 calls for a legal conclusion. And objection. Calls for  
24 speculation. Move to strike.

15:48 25 THE WITNESS: Yes. We would have had to deal

1 with the recall.

2 MR. POLK: I don't have anything further.

3 EXAMINATION BY MR. DUFFY

4 Q. Dr. Conaghan, I just want to follow up on one  
15:48 5 aspect of the testimony that Mr. Polk asked you about  
6 about LN2 usage in March. You indicated that you bought  
7 backup freezers in March after the incident. Do you  
8 recall that testimony?

9 A. Yes.

10 Q. How many did you purchase?

11 A. We purchased a large series 800 freezer to  
12 replace the backup freezer that got consumed with Tank  
13 4's contents. And then we purchased six small -- we  
14 call them dewars. They're much smaller than the typical  
15 tanks that we have, but we purchased those as additional  
16 backup capacity.

17 Q. And when you purchased the backup tanks --  
18 well, let me break that down. So it sounds like you got  
19 another MVE 808; is that right?

20 A. Yes, we got another MVE 800 series freezer.

21 Q. And then you got six smaller dewars; correct?

22 A. That's correct.

23 Q. And were these just to be dedicated as backup  
24 freezers?

25 A. Yes.

1 Q. Okay. So after purchasing them in March, were  
2 they stored on the first floor of the building where  
3 Pacific Fertility's lab is?

4 A. Yes, they were.

15:49 5 Q. And were they stored there the entire month of  
6 March?

7 A. I can't testify to that because I don't  
8 remember when the tanks arrived.

9 Q. Okay. But if they were backup freezers --  
15:49 10 well, strike that. Let me -- let me ask the question  
11 again.

12 The 800 series freezer and the six dewars were  
13 left empty ready to be used as backups in March if  
14 needed; correct?

15:50 15 A. The new 800 series dewar and the six backup  
16 dewars were ready to be used as backup freezers, yes.

17 Q. But -- yeah, but they weren't filled with  
18 liquid nitrogen on the first floor; right? You wouldn't  
19 do that; right?

15:50 20 MR. TARANTINO: Objection. Vague.

21 THE WITNESS: So when they arrived, they were  
22 filled with liquid nitrogen for validation.

23 Q. BY MR. DUFFY: Okay. And who did that?

24 A. I did some or all of it.

15:50 25 Q. Okay. And then after you validated them, did

1 DEPOSITION OFFICER'S CERTIFICATE

2 (Civ. Proc. § 2025.520(e))

3 STATE OF CALIFORNIA )  
4 COUNTY OF CONTRA COSTA ) ss

5  
6 I, CHERREE P. PETERSON, hereby certify:

7 I am a duly qualified Certified Shorthand  
8 Reporter, in the State of California, holder of  
9 Certificate Number CSR 11108 issued by the Court  
10 Reporters Board of California and which is in full force  
11 and effect. (Fed. R. Civ. P. 28(a)).

12 I am authorized to administer oaths or  
13 affirmations pursuant to California Code of Civil  
14 Procedure, Section 2093(b) and prior to being examined,  
15 the witness was first duly sworn by me. (Fed. R. Civ.  
16 P. 28(a), 30(f)(1)).

17 I am not a relative or employee of any attorney  
18 or counsel of any of the parties, nor am I a relative or  
19 employee of such attorney or counsel, nor am I  
20 financially interested in this action. (Fed. R. Civ. P.  
21 28).

22 I am the deposition officer that  
23 stenographically recorded the testimony in the foregoing  
24 deposition and the foregoing transcript is a true record  
25 of the testimony given by the witness. (Fed. R. Civ. P.

1 30(f)(1)).

2 Before completion of the deposition, review of  
3 the transcript (xx) was ( ) was not requested. If  
4 requested, any changes made by the deponent (and  
5 provided to the reporter) during the period allowed, are  
6 appended hereto. (Fed. R. Civ. P. 30(e)).

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8 Dated: November 16, 2020

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